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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/081,010	02/15/2002	Philippe Maria Margaron	273012011800	1251

25225 7590 03/18/2009

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EXAMINER	
FAY, ZOHREH A	

ART UNIT	PAPER NUMBER
1612	

MAIL DATE	DELIVERY MODE
03/18/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/081,010	MARGARON ET AL.	
	Examiner	Art Unit	
	ZOHREH A. FAY	1612	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *04 February 2009*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-33,37 and 38* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-33, 37, 38* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on February 4, 2009 has been entered.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-33, 37 and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over WO 98/34644.

The WO Patent teaches the use of reducing inflammation. The above reference teaches the steps of 1) bringing the injured tissues or "pre-injured tissues" with a photosensitizing agent capable of penetrating into the tissue 2) exposing the tissue to the light having wave length absorbed by photosensitizing agent for a time sufficient to reduce or prevent the inflammation. See the abstract and pages 20-28. The above reference differs from the claimed invention in reducing inflammation in tissues exposed to photodynamic therapy and the tissues that overlap with the tissues that have been treated with normal dose PDT. It would have been obvious to a person skilled in the art to use a low dose PDT for the treatment of inflammation, considering that the tissues overlapping with tissues subjected to photodynamic therapy are considered to be pre-injured tissues, which reads on the teachings of the above reference. Furthermore, the use of normal dose photodynamic for the reduction or prevention of inflammation is taught by the above reference.

One skilled in the art would have been motivated to employ the teachings of the above reference, since it relates t the use of normal dose photodynamic therapy for the prevention or reduction of inflammation in general in injured and pre-injured tissues. To treat inflammation arising from photodynamic therapy or any other source, using low dose photodynamic therapy taught by the prior art, as an anti-inflammatory agent would have been obvious to a person skilled in the art in the absence of evidence to the contrary. Applicant has presented no evidence to establish the unexpected or unobvious nature of the claimed invention, and as such, claims 1-26 and 29-32 are properly rejected under 35 U.S.C. 103.

Applicant's arguments regarding the obviousness rejection have been carefully considered, but are not deemed to be persuasive. Applicant in his remarks argues that the prior art does not teach that normal dose photodynamic therapy can cause inflammation that can be reduced or prevented by low dose PDT. Applicant is reminded that the rejection is an obviousness rejection and not anticipation. Therefore, it is not necessary for the reference to teach every element of the claimed invention in complete detail. Applicant's arguments regarding claims 1 and 17 are not also well taken. The prior art clearly teaches that the photodynamic therapy can affects the tissues beyond the treated area, and can cause damage to such tissues as well. Thus, to use a low dose light to treat such tissues would have been obvious to a person skilled in the art. Applicant in his remarks also argues that the prior art does not teach that PDT can cause inflammation. Applicant's attention is drawn to page 15, line 13 of the prior art reference, which teaches that inflammation caused by PDT is a double-edged sord. Applicant's arguments regarding the use of light per se of the instant application in comparison with the light in combination with a photosensitizing agents of the prior art have been noted. Applicant is reminded that the instant application targets the tissues, which have already been exposed to photosensitizing agents and still contain some photosensitizing agents. Applicant alleges criticality to the two step method. It is the examiner's position that the prior art clearly teaches the use of a photosensitizing agent with a light to reduce or prevent inflammation in injured or pre-injured tissues. The prior art also recognizes the inflammation can be induced as a result of PDT therapy. The prior art uses a low dose light being absorbed by a photosentsizing agent to treat

inflammation caused by the normal dose photodynamic therapy. The two step treatment does not create a patentably distinct use, given the teachings of the prior art that low dose light absorbed by photosensitizing can be used for the treatment of inflammation in injured or pre-injured tissues. It is expected that the treatment is usually done after the injury has occurred or expected to happen. The arguments regarding the area of treatment that is concentric with but larger than the area exposed to photodynamic therapy have been noted. The possible inflammation to the surrounding tissues exposed to photodynamic therapy is considered to be within the skill of the art. Therefore, using a low dose light for treating inflammation in the tissues overlapping but larger than the tissues exposed to normal dose photodynamic therapy is considered to be within the skill of the artisan. Applicant has presented no evidence to establish the unexpected or unobvious nature of the claimed invention, and as such, claims 1-33 and 37-38 are properly rejected under 35 U.S.C. 103 (a).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to ZOHREH A. FAY whose telephone number is (571)272-0573. The examiner can normally be reached on Monday to Friday 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Fredrick Krass can be reached on (571) 272-0580. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

ZF
/Zohreh A Fay/
Primary Examiner, Art Unit 1612